IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CWP No.302 of 2006
Date of Decision: 6.11.2006

Jalandhar Improvement Trust

Petitioner

versus

Debt Recovery Tribunal and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MR. JUSTICE PRITAM PAL

Present: Shri S.C.Khunger, Advocate for the petitioner
Shri N.C.Sahni, Advocate for respondent No.2
Shri Sanjiv Sharma, Advocate for respondent No.3

Jasbir Singh, J. (Oral)

Civil Misc. No. 18396 of 2006

This application has been moved under Section 151 CPC with a prayer to place on record an affidavit of the Executive Officer of the petitioner wherein, in para 2, names of the persons have been mentioned, who are to be impleaded as legal heirs of Parshotam Lal, who died in 1989. In view of averments made in this application, it is allowed, affidavit is taken on record and legal representatives of Parshotam Lal whose names are given in para 2 of the affidavit annexed with the application, are ordered to be impleaded as respondents, for the purpose of this litigation only.

Registry is directed to make necessary correction in memo of parties.

CWP No.18396 of 2006

This writ petition has been filed with a prayer to quash order dated 8.12.2005 (Annexure P/6), passed by the Recovery Officer of the Debt Recovery Tribunal, Chandigarh, whereby, objections filed by the petitioner, regarding attachment of the property, in dispute, were dismissed.

It is not in dispute that respondent No.3 is a defaulter. To recover the amount due to respondent No.2, it had already sold mortgaged properties of respondent No.3. Amount still remains to be recovered. To effect recovery, Flat bearing No.178/1 Shahid Udham Singh Nagar, Jalandhar, has been attached. At that stage, the petitioner filed objections to the attachment, which were dismissed by the Recovery Officer, vide order, under challenge.

It is not in dispute that initially this plot was allotted to Shri Parshotam Lal, who was one of the partners of respondent No.3, in the year 1975. For non-payment of installments, due towards price of the said plot, it was resumed by passing a resolution dated 17.1.1978 (Annexure P/8) and an intimation in that regard was sent to Parshotam Lal vide letter dated 1.12.1978 (Annexure P/9). It is also an admitted fact that possession of the property was not obtained from said Parshotam Lal. At present, as per affidavit filed, one of the partners of respondent No.3 is residing in that flat. May be due to connivance of some official of the petitioner with respondent No.3, action has not been taken to recover possession of the property, in dispute. For that, the petitioner is directed to initiate necessary action against the official, who had shown laxity in that regard.

Admittedly, Parshotam Lal, who was partner of respondent No.3, had died in the year 1989. His legal heirs, as per affidavit filed today, are residing in some foreign country. Once, it has come on record that the petitioner is the owner of the property, in dispute, merely because, initially,

Parshotam Lal and thereafter one of the partners of respondent No.3 is residing in that flat, it is not open to the respondent-Bank, to attach and then sell that property.

In view of admitted position, referred to above, the writ petition is allowed, order Annexure P/6 is set aside. However, liberty remains with the Bank to proceed against respondent No.3/ its partners, as per law. Further directions are issued to the petitioner, to get back possession of the property, in dispute. It is made clear that in future, if resumption order is set aside and the possession is restored to legal heirs of Parshotam Lal, the bank be at liberty to attach and sell that property, as per law.

(Jasbir Singh)
Judge

November 06, 2006 **(Pritam Pal)**
gk **Judge**